

**BEFORE THE  
EMPLOYMENT APPEAL BOARD  
Lucas State Office Building  
Fourth floor  
Des Moines, Iowa 50319**

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**ANNETTE J HISCOCKS**

Claimant,

and

**IOWA MOLD TOOLING CO INC**

Employer.

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**HEARING NUMBER: 12B-UI-12794**

**EMPLOYMENT APPEAL BOARD  
DECISION**

**NOTICE**

**THIS DECISION BECOMES FINAL** unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

**SECTION:** 96.5-2-A, 96.3-7

**DECISION**

**UNEMPLOYMENT BENEFITS ARE DENIED**

The Claimant appealed this case to the Employment Appeal Board. Two members of the Employment Appeal Board reviewed the entire record. Those members are not in agreement. Monique F. Kuester would affirm and John A. Peno would reverse the decision of the administrative law judge.

Since there is not agreement, the decision of the administrative law judge is affirmed by operation of law. The Findings of Fact and Reasoning and Conclusions of Law of the administrative law judge are adopted by the Board and that decision is **AFFIRMED** by operation of law. See, 486 IAC 3.3(3).

The Claimant has requested this matter be remanded for a new hearing. The Employment Appeal Board finds the applicant did not provide good cause to remand this matter. Therefore, the remand request is **DENIED**.

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Monique F. Kuester

**DISSENTING OPINION OF JOHN A. PENO:**

I respectfully dissent from the decision of the Employment Appeal Board; I would reverse the decision of the administrative law judge. The Claimant was terminated for making harassing statements in an e-mail in which she called the supervisor a ‘piece of sh-t’ and wished that he would die. The Employer was aware of the e-mail on July 22, 2011, yet did nothing to notify or suspend the Claimant until her discharge on August 10<sup>th</sup>, 2011. If the Employer believed that the Claimant’s e-mail was harassment or a threat, any reasonable person would believe that the Employer would have removed the Claimant from the work environment while the investigation took place.

The Claimant had no prior disciplines, and had no idea that her job was in jeopardy. Furthermore, the court in Greene v. Employment Appeal Board, 426 N.W.2d 659 (Iowa App. 1988) held that in order to determine whether conduct prompting the discharge constituted a “current act,” the date on which the conduct came to the Employer’s attention and the date on which the Employer notified the Claimant that said conduct subjected the Claimant to possible termination must be considered to determine if the termination is disqualifying. Any delay in timing from the final act to the actual termination must have a reasonable basis. The Employer provided no such reasoning. While the Employer may have compelling business reasons to terminate the Claimant, conduct that might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). Based on this record, I would conclude that the Employer failed to satisfy their burden of proof. Benefits should be allowed provided the Claimant is otherwise eligible.

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John A. Peno

AMG/fnv